

IN THE MATTER OF)
THE PERMIT OF)

EMMA BRONER)
d/b/a RITZ LOUNGE)
2628 NORTH HARDING STREET)
INDIANAPOLIS, INDIANA 46208)

PERMIT NO. RR49-10068

Permittee.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Emma Broner, d/b/a Ritz Lounge, 2628 N. Harding Street, Indianapolis, Indiana 446208, permit number RR49-10068 (“Permittee”), is the holder of a type 210 Alcohol and Tobacco Commission (“ATC” or “Commission”) permit. Permittee filed her request for renewal and that application was assigned to the Marion County Local Board (“Local Board”) for hearing. The Local Board held a renewal hearing on June 5, 2006 and continued the proceedings for ninety (90) days. On September 5, 2006, the Local Board voted 3 – 0 to recommend approval of the permit. The ATC adopted the recommendation of the Local Board and approved the renewal application.

Remonstrators, Dan Berlin, Thomas McElwain, S. Lee Ladd, and Derek Tow filed timely Petitions for Intervention and were granted permission to intervene in this cause. The matter was assigned to the Hearing Judge U-Jung Choe (“Hearing Judge”) and a hearing was conducted on January 9, 2007, and February 8, 2007 (“ATC Hearing”). Witnesses were sworn, evidence was heard, and matters were taken under advisement. The Hearing Judge, having reviewed the tape-recorded transcript of the Local Board hearing, the evidence submitted to the ATC Hearing, and the contents of the entire ATC file (“ATC File”), now

tenders her Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. EVIDENCE BEFORE THE LOCAL BOARD

A. The following individuals testified before the Local Board in favor of the Permittee in this cause:

1. Emma Broner. Ms. Broner stated that the neighborhood has problems and shares the concern of the remonstrators, but feels she is not to blame. Ms. Broner testified that she does not allow drug activity on the permit premises and has barred some individuals she feels are involved in drug activity. Ms. Broner wants to be a good neighbor and has requested that Indianapolis Metropolitan Police Department (“IMPD”) work with her to help remedy problems at the permit premises. She has requested that IMPD officers visit her establishment to deter drug activity. She disputes Mr. Berlin’s claim that patrons of the Ritz Lounge have fired handguns in the air. Although she takes responsibility for what goes on at the permit premises, she cannot prevent people outside the premises from trespassing or urinating on others’ property. There is a nearby liquor store that she believes contributes to the public urination problem.

Ms. Broner has tried to work with the neighborhood by posting no loitering signs, closing doors and windows to minimize noise outside the establishment. She has painted the exterior of the building and obtained bids to repair the fence. She contacted Keep Indianapolis Beautiful to request its assistance in beautifying a nearby median, which she does not own, to prevent people from parking cars on the median. A recent inspection by the health department resulted only in violations for not having soap in the men’s bathroom and for storing nonperishable items on the floor beneath some shelving.

B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:

1. Photographs depicting newly painted permit premises.

C. The following individuals testified before the Local Board against the Applicant in this cause:

1. Dan Berlin. Mr. Berlin resides 100 feet from Ritz Lounge with a vacant lot between his home and the permit premises. He frequently collects trash and alcohol containers from the vacant lot and in front of his home. Mr. Berlin has heard gunshots near the permit premises. Mr. Berlin is not certain if the trash he picked up is from the permit premises and admits that not all of the problems are attributable to Ms. Broner. There are excessive number of incidents, such as public urination, drug dealing and minors loitering, within a block radius of the permit premises.

2. Thomas McElwain. Mr. McElwain lives near the permit premises. He is a fourth generation resident of the neighborhood and has children and grandchildren living there. He feels that the said permit premises is no longer neighborhood friendly.

3. Lee Ladd. Mr. Ladd lives near the permit premises. Mr. Ladd stated that the permit premises contributes towards the neighborhood's problems with debris, public urination and overflowing trash. He is concerned about depreciation of the houses in the area and faces problems related to excessive noise from music and gunshots being fired into the air. Mr. Ladd is particularly concerned for the children in the area. Mr. Ladd admitted that Ms. Broner started closing at 2:30 am rather than at 3:00 am on certain nights and increased security for the permit premises.

4. Nathaniel Shultz. Mr. Shultz is a second generation resident of the neighborhood. There are frequently shots fired into the air in the evening. There are problems

with drug dealing and so long as the problems aren't addressed, no one will invest in that corridor.

5. Derek Tow. Mr. Tow is a resident of the neighborhood. Ms. Broner does not exercise enough control of her patrons. He is concerned for the children in the area and for the community as a whole.

6. Melvin Franklin. Mr. Franklin is a 26 year resident of the neighborhood. He believes the permit premises to be a public nuisance and is out of control. There is a problem with people shooting guns into the air although he was not certain whether these people are patrons of the permit premises. There are many vacant homes in the area and problems with traffic congestion in front of the permit premises. Mr. Franklin will frequently take other streets just to avoid that block.

D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:

1. Series of photographs depicting permit premises, median, and neighboring houses.

III. EVIDENCE BEFORE THE COMMISSION

A. The following individuals testified before the Commission in favor of the Permittee in this cause:

1. Emma Broner. Ms. Broner testified that she has owned the Ritz Lounge since 1991. During that time its license has never been revoked. Since the last renewal, she has not been cited for any violations. Her policy is to check patrons' identification at the door, and to pat them down for weapons before allowing them to enter. She is a member of the Riverside Civic League, a neighborhood association. The League has not communicated to her any problems concerning the Ritz Lounge. She has conducted meetings with area residents to hear their concerns. As a result she has relocated speakers in the Ritz to make the music less

audible outside the premises; she has placed “no loitering” signs in the back of the building to discourage loitering; she has asked Keep Indianapolis Beautiful for help in improving a nearby median to discourage people from parking there; and she has painted the building to improve its appearance. Ms. Broner also testified that she paid a \$3,000.00 fine in connection with a violation that occurred at the Ritz Lounge on December 31, 2005, in which several minors were allowed onto the premises. She also immediately terminated the security doorman who allowed the minors to enter.

B. The following evidence was introduced and admitted before the Commission in favor of the Permittee in this cause:

None.

C. The following individuals testified before the Commission against the Permittee in this cause:

1. Dan Berlin. Mr. Berlin testified that he has lived next to the Ritz Lounge since August 2005. On December 31, 2005, he witnessed two men exit the Ritz Lounge and fire guns into the air, prompting him to call the police. His quality of life is diminished because of the Ritz Lounge. Ms. Broner has made some effort, but not enough to guarantee the safety of the neighborhood. The Ritz Lounge is one of the nicer buildings in the area now after Ms. Broner has painted the building to improve its appearance.

2. Thomas McElwain. Mr. McElwain testified that loud noise comes from the Ritz Lounge. He also testified that when he entered the Ritz Lounge on December 31, 2006, he was not patted down by security.

3. Derek Towe. Mr. Towe testified that he moved to the neighborhood in 2004. He does not think the Ritz Lounge is good for the neighborhood.

4. S. Lee Ladd. Mr. Ladd testified that he has lived in the neighborhood since 2001. There is a lack of supervision in the Ritz Lounge. Although he has no problem with the bar being in the neighborhood, he wants Ms. Broner to be responsible.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

1. Group Exhibit #1 – comprised of “core principles of comprehensive community development” from <http://web.bsu.edu/capic/greatneighborhoods> (June 4, 2006); photographs of the remonstrators’ houses and the neighborhood; ATC violation docket sheet; “New Poll Says Hoosiers Want Alcohol Sold Safely and Oppose Unregulated Sales,” from <http://www.wswi.com/PressRelease/060221-HB1190> (February 22, 2006); A letter addressed to Ms. Broner listing the community’s concerns, dated May 17, 2006. A letter addressed to Marion County Alcoholic Beverage Board listing issued to be addressed at the hearing, dated September 5, 2006; web articles from www.theindychannel.com/print/9428007/detail.html, www.wishtv.com, www.indystar.com/apps/pbcs.dll/article?AID=20060906/NEWS01/60906040; a photograph of bullet shells found in Mr. Berlin’s yard; a letter written by Bradley D. Tomey addressed to ATC expressing concerns about his neighborhood, dated January 8, 2007; and a letter written by Nathaniel R. Shobe addressed to City of Indianapolis expressing his concerns about his neighborhood.

2. A letter written by Dan Berlin addressed to ATC expressing his opposition to the renewal of the permit, January 16, 2006.

3. A letter written by S. Lee Ladd addressed to ATC expressing his opposition to the renewal of the permit, January 19, 2006.

4. Copies of Marion County Run Selection Query, prepared by IMPD Information Management Office, July 2006.

5. Indiana State Excise Police Case Report, January 3, 2006.

E. The following individual testified before the Commission in regard to this matter:

1. Marnie Bader. Ms. Bader is a Civilian Special Investigator with IMPD. Ms. Bader testified that her duties include land use issues, including zoning and nuisance investigations. She does not use police runs to identify problems. Her review of the relevant evidence against the Permittee indicates that IMPD does not have cause to prosecute the Permittee or classify the Ritz Lounge as a nuisance. Leasing out the kitchen was a problem,

but the Permittee has remedied that problem by retaining control of the kitchen. Ms. Broner has been helpful, honest, and cooperative with IMPD: she took responsibility for the incident on December 31, 2005, and has not had any violations since; she has agreed to keep the windows closed to minimize noise; and she has encouraged an unannounced inspection by the State Fire Marshall. The Ritz Lounge is located in a high crime neighborhood. Many other businesses within close proximity to the Ritz Lounge cause more problems. The condition of the neighborhood has remained unchanged throughout the time Ms. Broner has operated the Ritz Lounge. Ms. Broner does not bear the burden for the entire neighborhood.

IV. FINDINGS OF FACT

1. The Permittee, Emma Broner, d/b/a Ritz Lounge, 2628 N. Harding Street, Indianapolis, Indiana 446208, permit number RR49-10068, is the holder of a type 210 ATC permit. (ATC File).
2. The Local Board voted 3 – 0 to recommend approval of the permit. (ATC File).
3. The Commission upheld the Local Board's recommendation and unanimously approved the renewal of the Permittee's application. (ATC File).
4. The Permittee has made reasonable and affirmative steps to address the concerns of the neighborhood, including repainting the exterior of the building, discouraging loitering in the parking lot, changing the configuration of loudspeakers in the building to minimize noise, and seeking the assistance of Keep Indianapolis Beautiful to improve a nearby median so as to deter people from parking vehicles on the median. (Local Board Hearing; ATC Hearing).

5. All parties concede that the Ritz Lounge is located in a high crime area. (ATC Hearing).

6. All of the problems of the neighborhood cannot be attributed to the Ritz Lounge. (Local Board Hearing; ATC Hearing).

7. Neither the Local Board nor the police officers who patrol the area of the Ritz Lounge find any basis to support the Remonstrators' position that the Ritz Lounge is the cause of all the problems in the neighborhood. (Local Board Hearing; ATC Hearing).

8. Remonstrators concede that the Ritz Lounge cannot be blamed for all the problems in the neighborhood. (ATC Hearing).

9. The Applicant is of good moral character and of good repute in the community. (ATC Hearing).

10. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.

2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.

3. The Commission is authorized to act upon proper application. *Id.*

4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).

5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission, including a public hearing and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).

6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).

7. The Applicant is a fit and proper applicant, has maintained a reputation for decency and law obedience, and is qualified to hold an alcoholic beverage permit under Indiana law. 905 IAC 1-27-1 and Ind. Code § 7.1-3-9-10.

8. The Applicant is not disqualified from holding an ATC permit. Ind. Code § 7.1-3-4-2; Ind. Code § 7.1-3-5-2 and Ind. Code § 7.1-3-15-2.

9. The recommendation of the Local Board was based on substantial evidence. (Local Board Hearing; ATC Hearing).

10. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Marion County Local Board was supported by substantial evidence, was not arbitrary and capricious, and otherwise in accordance with law, and the Indiana Alcohol and Tobacco Commission should affirm its decision. The renewal application of Emma Broner, d/b/a Ritz Lounge, 2628 N. Harding Street, Indianapolis, Indiana 446208, permit number RR49-10068,

for a type 210 Alcohol and Tobacco Commission permit, was sufficient and the renewal of said permit is hereby GRANTED.

DATE: March 16, 2007

U-Jung Choe, Hearing Judge